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September 28, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: CC Docket No. 93-193, Phase I - 1993 Annual Access Tariff Filings; CC Docket
No. ~~94-65~~ 1994 Annual Access Tariff Filings; CC Docket No. 93-193, Phase II
- AT&T Communications, Tariff F.C.C. Nos. 1 and 2, Transmittal Nos. 5460,
5461, 5462, 5464; CC Docket No. 94-157 - Bell Atlantic Telephone
Companies, Tariff F.C.C. No. 1, Transmittal No. 690; NYNEX Telephone
Companies, Tariff F.C.C. No. 1, Transmittal No. 328

On behalf of Pacific Bell, please find enclosed an original and six copies of its "Reply
to Opposition" in the above proceedings.

Please stamp and return the provided copy to confirm your receipt. Please contact
me should you have any questions or require additional information concerning this
matter.

Sincerely,

JAY BENNETT/AFC

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
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1993 Annual Access Tariff Filings)	CC Docket No. 93-193, Phase I
)	
1994 Annual Access Tariff Filings)	CC Docket No. 94-65
)	
AT&T Communications)	CC Docket No. 93-193, Phase II
Tariff F.C.C. Nos. 1 and 2)	
Transmittal Nos. 5460, 5461, 5462, 5464)	
)	
Bell Atlantic Telephone Companies)	CC Docket No. 94-157
Tariff F.C.C. No. 1, Transmittal No. 690)	
)	
NYNEX Telephone Companies)	
Tariff F.C.C. No. 1, Transmittal No. 328)	
)	

REPLY TO OPPOSITION

Pacific Bell ("we" or "Pacific") hereby respectfully replies to the Opposition to Direct Cases in the above-referenced docket, filed by MCI Telecommunications Corp. ("MCI") on September 13, 1995.

MCI states the gist of its argument when it says,

the LECs have provided the Bureau with no new evidence to support their excessive claims. In fact, the LECs have merely restated the arguments which the Commission previously found to be inadequate. Every LEC direct case submitted in this proceeding continues to rely on the Godwins and NERA studies to justify the OPEB amount claimed for exogenous treatment.

(MCI, p. 2.) MCI's whole argument is disingenuous, if not misleading. MCI relies on a Commission decision that was reversed on appeal, without ever acknowledging the reversal.¹ MCI's present arguments are all collaterally estopped by the Court's decision.

NERA vs. Godwins, and their "Unverifiable Assumptions." MCI refers to the Commission's previous rejection of both the NERA and Godwins studies because they "started out with completely different assumptions regarding competitive sector pricing behavior." MCI also complains that both "studies utilize models that require unverifiable assumptions to produce quantified impacts." (MCI, pp. 3, 5.) The most succinct response to these complaints is stated in the Court's own words:

The Commission attacked the Godwins and NERA studies on a variety of grounds. First it observed that neither study proved that its initial assumptions were correct, noting caustically that the sets of assumptions were in "sharp contrast". The claim of complete want of support is in fact false, for the NERA study pointed to econometric evidence that accounting changes generally have no effect on stock prices, which tends to support the proposition that the market sees through such conventions. But quite apart from that, *any* analysis of whether an exogenous change will be reflected in GNP-PI will involve some unproven -- and likely unprovable -- assumptions. Indeed, the Commission's own brief characterized the assumptions as "impossible to verify". If an agency can reject an econometric study merely by observing that it employed unproven assumptions (and that the outside party bore the burden of proof), then no party with the burden can ever prevail. "[A]ssigning the burden of proof is not a magic wand that frees an agency from the responsibility of reasoned decision-making." To reject such a study, the Commission must at least express a reason for doubting some critical assumption.

Moreover, to the extent that the FCC concluded that because the studies began with different assumptions, neither could be relied upon, its

¹ *In the Matter of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Postretirement Benefits Other Than Pensions,"* CC Docket No. 92-101, Memorandum Opinion and Order, 8 FCC Rcd 1034 (1993), reversed and remanded, *Southwestern Bell Tel. Co. v. FCC*, 28 F.3d 165 (D.C. Cir. 1994).

decision was quite illogical. Given the difficulty of verifying the assumptions that must underlie any such analysis, it was natural for the LECs to cover a range of possibilities. The substantial identity of results in the face of widely varying assumptions tended simply to show that the outcome was insensitive to this variation. That rendered the conclusions more robust, not less.²

MCI thus simply parrots arguments already considered by the Commission and rejected by the Court. It expresses not a single new “reason for doubting some critical assumption” behind the studies. Indeed, as the Court pointed out, it is false to contend that the assumption behind the NERA study was unsupported. Subsequent events have only reinforced the validity of NERA’s study. NERA’s study predated the mandatory implementation date of SFAS-106 for companies that keep their books in accordance with GAAP. If NERA’s determination that “accounting changes generally have no effect on stock prices” were untrue, the implementation of SFAS-106 itself (to say nothing of a spate of other recent FASB-mandated accounting changes that reduced corporate earnings) should have resulted in an observable reduction in the stock prices of the large number of American corporations who were required to make SFAS-106 accruals. There is no evidence that anything of this sort happened -- at least no evidence that MCI has presented.

Reliance on Evidence Previously Submitted. MCI complains that “[b]esides relying on the same studies which the Commission has already questioned, the LECs have also responded to many of the Bureau’s questions by simply referring to comments previously submitted.” (MCI, p. 5.) In every instance in which we referred to or relied on previously submitted evidence, we believe that it was appropriate. MCI fails to acknowledge that prospective OPEB-based adjustments have been removed from our price caps pursuant to the

² 28 F.3d at 171-72 (citations omitted; emphasis in original).

Commission's order in the price cap performance review.³ The costs that remain in our price caps and are subject to this investigation were incurred in calendar years 1993 and 1994.⁴ The legal standard against which these PCIs should be judged was the one in effect at that time, not a newly minted standard that could require the submission of new evidence.

Employee Participation Rate. MCI says that "[t]he LECs should explain how they arrive at their participation rates, and why it is reasonable for ratepayers to fund an overly generous program." (MCI, p. 6.) In determining our OPEB accrual, our actuaries exclude from the results those retirees and employees who waive benefit coverage as of the valuation date. Therefore, current participation rates are reflected in the results. These same rates are also the best estimate of future participation rates for both current and future retirees.

MCI fails to identify what it considers to be "overly generous" about our retirement programs. Moreover, MCI's criticism appears to be either a veiled resuscitation of the illegitimate "control" test that was rejected by the Court,⁵ or an untimely attack on the legitimacy of expenses that have been in our rates for many years -- rates that were investigated

³ *Price Cap Performance Review for Local Exchange Carriers*, First Report and Order, CC Docket No. 94-1, FCC 95-132 (released April 7, 1995), para. 309.

⁴ See *1995 Annual Access Tariff Filings of the NYNEX Telephone Companies and Pacific Bell*, CC Docket No. 94-157, Memorandum Opinion and Order on Reconsideration; Order Suspending and Investigating Rates, DA 95-1665 (released July 27, 1995).

⁵ "The Commission frankly recognized that the accounting change was 'not within the carriers' control'. Yet it denied exogenous cost treatment, saying that because the carriers 'exercise substantial control over the level and timing of OPEB expenses', such treatment would 'give the LECs undue power to influence their PCI levels, and would undermine the incentive structure of price caps.'

"There simply is not a hint of such a control test in the Commission's discussion of accounting changes in either the LEC Price Cap Order or the LEC Price Cap Reconsideration." 28 F.3d at 169-70 (citations omitted).

again without any suggestion that the OPEB expenses they recovered were “overly generous.”

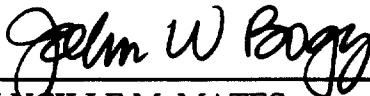
The Commission specifically rejected contentions that these pre-price cap rates were “inflated.”⁶

⁶ See *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786, para. 242 (1990).

For all of the foregoing reasons, MCI's opposition should be disregarded, and this investigation should be concluded with no refund.

Respectfully submitted,

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Date: September 28, 1995

CERTIFICATE OF SERVICE

I, Chuck A. Nordstrom, hereby certify that on this 28th of September, 1995, a true and correct copy of the foregoing **Reply Comments of Pacific Bell** was mailed, first-class postage prepaid, to the parties shown on the attached list.


Chuck A. Nordstrom

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Docket No. 94-157**

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